

SENATE BILL NO. 5  
JUDICIAL NO. 2/21/13  
SB267

# Ravalli County Attorney

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December 28, 2012

Honorable James A. Haynes  
Ravalli County Courthouse

*Re: No Contest Plea Legislation*

Judge Haynes:

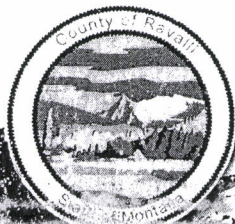
I received your draft proposal for amendments to §46-16-105 & §46-17-203, MCA to address no contest pleas. I apologize that my response was delayed.

I am in agreement with your analysis that the above statutes need to be consistent with §46-12-204, MCA, bringing the above statutes in line with the arraignment statute. Your proposed amendment seems to be a straightforward way to avoid needless arguments about interpretation of the three plea alternative statutes. As a working issue, it is important to maintain the distinction between the permissive standard for acceptance of no contest pleas and the mandatory acceptance of a guilty plea. There are certainly cases where I believe that I will fall short of our community's expectations if the case ends with a no contest plea, instead of an admission of guilt by the accused or a jury verdict.

I like the language of your proposed amendment, both in using already codified language so it is consistent, and by amending the statutes to conform to existing practice and interpretation of these statutes. My additional suggestion to consider is to include the language of §46-12-204(4), MCA as part of the amendment, adding a new subsection (4) to §46-16-105 & §46-17-203:

*(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303.*

I believe that including subsection (4) in the amendments will help firmly set the boundaries for a no contest plea consistent throughout the code, and, for sexual offenses, avoid the same issues that are raised in your analysis.



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Thank you for the chance to look at your proposal. Please let me know if I can offer any more assistance.

Sincerely,

A handwritten signature in dark ink, appearing to be 'BF' or similar initials, written over the printed name.

Bill Fulbright

WEF/ld